Public Prosecutor v Sanin bin Othman

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO J-05–163 OF 2009
SURIYADI, HASAN LAH AND SULAIMAN DAUD JJCA
26 OCTOBER 2010

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Criminal Law — Penal Code — s 302 — Murder — High Court judge held that respondent had no intention to kill deceased and found him guilty of lesser offence of culpable homicide not amounting to murder — Appeal against conviction — Whether prosecution established beyond reasonable doubt that respondent had intention to cause bodily injury to deceased — Whether bodily injury intended to be inflicted was sufficient in ordinary course of nature to cause death — Penal Code ss 302 & 304

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Evidence — Witness — Interested witness — Evidence of deceased's wife that deceased was unarmed — Whether evidence should be accepted

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Sanin bin Othman ('the respondent') was charged with causing the death of Lim Meng Lee ('the deceased') in a shop managed by the deceased and his wife. On 19 January 2004, when the respondent had entered the shop in the pretext of buying fishing implements, the deceased was in another part of the shop. While the deceased's wife was attending to the respondent, the latter had come from the rear and held a knife to the right side of her neck. Startled by the attack and realising the respondent's intention to rob the shop, the deceased's wife had kicked a chair beside her and fallen. The deceased who came to investigate the commotion was then stabbed by the respondent. In the course of standing up, the deceased's wife had clearly seen the respondent stabbing the deceased twice before running out of the shop. The respondent was later apprehended by two passers-by, who handed him over to a police officer. The deceased died on the way to the hospital. The doctor who conducted the postmortem found two stab wounds on the deceased and concluded that either one of the stab wounds was fatal. The respondent was charged with causing the death of the deceased, an offence under s 302 of the Penal Code ('Code'). It was the respondent's defence that his intention was only to rob but that in the course of his attempted robbery, a struggle had ensued between him and the deceased and that the injuries were accidentally inflicted while he was trying to make a getaway. At the close of the case for the prosecution, the respondent submitted that there was no case to answer under s 302 of the Penal Code as there was no intention to kill or to cause such bodily injury that was likely to cause death. The trial judge found that the two stab wounds were inflicted accidentally either during the struggle or the getaway and that there was no intention to kill.

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A Thus the charge of murder was amended to one of culpable homicide not amounting to murder under s 304 of the Code ('the amended charge') and a charge of attempted robbery under ss 393 and 397 ('the additional charge') was also added. The respondent pleaded guilty to both charges and was sentenced to 12 years of imprisonment for the amended charge and six years of B imprisonment and six strokes of the rotan for the additional charge. When the prosecution appealed against that decision, the Court of Appeal ordered the defence to be called under the original charge of murder under s 302 of the Code. After hearing the defence, the High Court found the respondent guilty of the lesser charge under s 304(a) of the Code. This was the prosecution's C appeal against that conviction. The issues for determination in this appeal were whether the prosecution had established beyond a reasonable doubt that the respondent had the intention to cause bodily injury to the deceased and whether the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. D

Held, allowing the appeal:

(1) When the evidence adduced by the respondent at the defence stage was tested against the evidence adduced at the prosecution's stage, several E falsities were detected in the respondent's testimony. Although the respondent stated that while struggling with the deceased the latter had managed to grab the knife from him, the deceased's wife had stated that the deceased was never in possession of any weapon at any stage of the F struggle. Even though the deceased's wife was an interested witness, her evidence was entitled to credence. In any case, if it were true that the deceased had grabbed the knife from the respondent he would have suffered cuts or lacerations but the postmortem report did not reveal such cuts. Once the respondent's veracity had been shown to be doubtful, the G whole of his evidence had to be scrutinised with care (see paras 17 & 17(a)-b)).

(2) The evidence before the court was more than ample to establish the ingredient of intention to commit murder. The wounds suffered by the deceased were not mere slash wounds that were accidentally inflicted but H deep wounds that would have required great force. As such, it would defy logic that the respondent did not intend to kill or to cause serious injury. Further, there was more than ample time for the respondent to formulate his intention to kill or cause injury to someone and that injury was sufficient in the ordinary course of nature to cause death. The evidence of I the deceased's wife had also put to rest any lingering doubts as to whether the stabbings were accidental, unintentional or otherwise. When the criminal act fell within the ambit of s 302 of the Code with the intention falling under s 300 of the Code, in this case s 300(c) of the Code, the prosecution had successfully established a case beyond reasonable doubt

for the charge of the murder, and the respondent had failed to rebut the prosecution's case (see paras 20 & 25–26). A

[Bahasa Malaysia summary

Sanin bin Othman ('responden') telah dituduh menyebabkan kematian Lim Meng Lee ('si mati') dalam kedai yang dikendalikan oleh si mati dan isterinya. Pada 19 Januari 2004, apabila responden memasuki kedai itu dengan berpura-pura hendak membeli peralatan ikan, si mati berada di bahagian lain kedai itu. Apabila isteri si mati sedang melayan responden, responden datang dari belakang dan meletak pisau di bahagian kanan lehernya. Terkejut dengan serangan itu dan menyedari niat responden untuk merompak kedai itu isteri si mati telah menyepak kerusi di sebelahnya dan jatuh. Si mati yang datang menyiasat bunyi bising itu kemudian telah ditikam oleh responden. Semasa berdiri, isteri si mati dengan jelas melihat responden menikam si mati dua kali sebelum lari keluar kedai itu. Responden kemudian telah ditahan oleh dua orang yang lalu lalang situ, yang telah menyerahnya kepada pegawai polis. Si mati telah meninggal dunia dalam perjalanan ke hospital. Doktor yang menjalankan post mortem mendapati dua luka tikaman pada si mati dan membuat kesimpulan bahawa salah satu daripada luka tikaman itu adalah mudarat. Responden telah dituduh kerana menyebabkan kematian si mati, satu kesalahan di bawah s 302 Kanun Keseksaan ('Kanun'). Dalam pembelaannya, responden menyatakan bahawa niatnya hanya untuk merompak tetapi semasa cubaan merompak satu pergelutan telah berlaku antara dia dan si mati dan bahawa kecederaan tidak sengaja berlaku semasa dia cuba melarikan diri. Semasa penutup kes pendakwaan, responden berhujah bahawa tiada kes untuk dijawab di bawah s 302 Kanun Keseksaan ('Kanun') kerana tiada niat untuk membunuh atau menyebabkan kecederaan badan yang boleh menyebabkan kematian. Hakim perbicaraan mendapati bahawa dua luka tikaman yang berlaku tidak sengaja sama ada semasa pergelutan atau cubaan melarikan diri dan bahawa tiada niat untuk membunuh. Oleh itu pertuduhan membunuh telah dipinda kepada homisid salah yang tidak terjumlah kepada kesalahan membunuh di bawah s 304 Kanun ('pertuduhan yang dipinda') dan pertuduhan cubaan rompakan di bawah ss 393 dan 397 ('pertuduhan tambahan') juga telah ditambah. Responden mengaku bersalah terhadap kedua-dua pertuduhan dan telah dijatuhkan hukuman penjara selama 12 tahun untuk pertuduhan yang dipinda dan enam tahun penjara dan enam kali sebatan rotan untuk pertuduhan tambahan. Apabila pendakwaan merayu terhadap keputusan tersebut, Mahkamah Rayuan memerintahkan pembelaan dipanggil di bawah pertuduhan asal kerana pembunuhan di bawah s 302 Kanun. Selepas mendengar pembelaan, Mahkamah Tinggi mendapati responden bersalah terhadap pertuduhan yang lebih ringan di bawah s 304(a) Kanun. Ini adalah rayuan pendakwaan terhadap sabitan. Isu-isu yang perlu ditentukan dalam rayuan ini adalah sama ada pendakwaan telah membuktikan melampaui keraguan munasabah bahawa responden mempunyai niat mengakibatkan kecederaan kepada badan si mati dan sama ada kecederaan

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A pada badan itu yang diniatkan untuk dilakukan itu memadai dalam keadaan biasa mengakibatkan kematian.

Diputuskan, membenarkan rayuan:

B (1) Apabila keterangan dikemukakan oleh responden di peringkat pembelaan diuji dengan keterangan yang dikemukakan di peringkat pendakwaan, beberapa perkara tidak benar ditemui dalam testimoni responden. Meskipun responden menyatakan bahawa semasa bergelut dengan si mati, si mati berjaya merampas pisau itu daripadanya, isteri si C mati menyatakan bahawa si mati tidak memiliki apa-apa senjata sepanjang pergelutan itu. Meskipun isteri si mati merupakan saksi berkepentingan, keterangannya patut dipercayai. Dalam apa jua keadaan, jika benar si mati telah merampas pisau daripada responden dia mungkin mengalami luka atau calar tetapi laporan post mortem tidak D menunjukkan luka sedemikian. Jika kebenaran responden terbukti meragukan, keseluruhan keterangan perlu diteliti dengan berhati-hati (lihat perenggan).

(2) Keterangan di hadapan mahkamah lebih daripada mencukupi untuk membuktikan elemen niat untuk melakukan pembunuhan. Luka yang E dialami oleh si mati bukan sekadar luka calar yang tidak sengaja dilakukan tetapi luka dalam yang memerlukan daya yang kuat. Oleh itu, tidak logik untuk mengatakan bahawa responden tidak berniat untuk membunuh atau menyebabkan kecederaan serius. Tambahan, responden mempunyai masa yang lebih daripada mencukupi untuk membentuk F niatnya untuk membunuh atau menyebabkan kecederaan terhadap seseorang dan kecederaan itu memadai dalam keadaan biasa untuk mengakibatkan kematian. Keterangan isteri si mati juga melenyapkan sebarang keraguan berhubung sama ada tikaman itu adalah tidak sengaja, tanpa niat atau sebaliknya. Jika perbuatan jenayah terangkum dalam G skop s 302 Kanun dengan niat yang terangkum di bawah s 300 Kanun, dalam kes ini s 300(c) Kanun, pendakwaan telah berjaya membuktikan kes melampaui keraguan munasabah kerana pertuduhan membunuh, dan responden telah gagal mematahkan kes pendakwaan (lihat perenggan).]

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Notes

For cases on s 302 of Penal Code, see 4 *Mallal's Digest* (4th Ed 2010 Reissue) paras 1698–1776.

For cases on interested witness, see 7(2) *Mallal's Digest* (4th Ed 2011 Reissue) I paras 3180–3192.

Cases referred to

Balachandran v PP [2005] 2 MLJ 307; [2005] 1 CLJ 85, FC (refd)
Chee Kim Seng & Anor v PP [1962] MLJ 32, CA (refd)

Mat v PP [1963] MLJ 263 (refd)
Mohamed Ali v PP [1962] MLJ 230 (refd)
Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (refd)
Mohamed Yasin bin Hussin v PP [1976] 1 MLJ 156, PC (refd)
Muniandy a/l Subramaniam v PP [2006] 6 MLJ 623, CA (refd)
PP v Foong Chee Cheong [1970] 1 MLJ 97 (refd)
PP v Neoh Bean Chye & Anor [1975] 1 MLJ 3 (refd)
PP v Tan Joo Cheng & Ors [1991] 1 MLJ 196, HC (refd)
Rajwant Singh v State of Kerala AIR 1966 SC 1974 (refd)
Saad bin Abas & Anor v PP 1999] 1 MLJ 129; [1998] 4 CLJ 575, CA (refd)
Sainal Abidin bin Mading v PP [1999] 4 MLJ 497, CA (refd)
Sucha Singh v State of Punjab (2003) Cri LJ 3876 (refd)
Tan Buck Tee v PP [1961] MLJ 176, CA (refd)
Tan Cheow Bock v PP [1991] 3 MLJ 404 (refd)
Tham Kai Yau & Ors v PP [1977] 1 MLJ 174 (refd)
Virsa Singh v State of Punjab AIR 1958 SC 465 (refd)

Legislation referred to

Penal Code ss 300, 300(c) 302, 304, 304(a), 393, 397

Appeal from: Criminal Trial No 45–4 of 2002 (High Court, Muar)

Awang Armadajaya bin Awang Mahmud (Attorney General's Chambers) for the appellant.
K Sandrasegaran (Tay, Bernard & Cheong) for the respondent.

Suriyadi JCA (delivering judgment of the court):

[1] Sanin bin Othman ('the respondent') was originally indicted for causing the death of one Lim Meng Lee (I/C 731128-01-5279) on 19 January 2001 at about 12.20pm to 12.30pm in a shop at No 89, Jalan Chengal, Taman Makmur, Batu Pahat, Johor Darul Takzim, and thus had committed an offence under s 302 of the Penal Code ('the Code'). At the close of the case for the prosecution, the respondent submitted that there was only a case to answer under s 304 but not under s 302 of the Code. His intention was only to rob and not to kill or to cause such bodily injury likely to cause death. Furthermore his demeanour was inconsistent with the intention under s 300 of the Code.

[2] At the end of the case for the prosecution, the charge of murder was indeed amended to one of culpable homicide not amounting to murder and punishable under the first limb of s 304 of the Code ('the first trial'). A charge of attempted robbery under s 393/397 of the Code was also added. The respondent pleaded guilty to both charges. He was convicted and sentenced to 12 years imprisonment for the amended charge and six years imprisonment and six strokes of the rotan for the additional charge. Both sentences were

ordered to run concurrently. The prosecution appealed against the decision and the Court of Appeal ('the COA') allowed the appeal on 19 January 2009. The COA ordered defence to be called under the original charge of s 302 of the Code.

[3] When defence is directed to be called by an appeal court the trial judge must accept that a *prima facie* case has been proven. It is as if the defence was called by the learned judge himself (*Saad bin Abas & Anor v Public Prosecutor* [1999] 1 MLJ 129; [1998] 4 CLJ 575). Only after he has gauged the total evidence adduced, inclusive of all the evidence adduced at the prosecution's stage, and tested as against the defence evidence may the fate of the accused person be decided by the court. In short there will be a maximum evaluation of the whole evidence at the close of the defence.

[4] In this appeal the same learned judge who heard the defence, after conducting the trial to fruition, found the respondent guilty of the lesser charge of s 304(a) of the Code ('the second trial'). The public prosecutor filed an appeal and this court heard the appeal. We allowed the appeal and set aside the High Court order whereupon the respondent was found guilty of murder. We convicted him and accordingly sentenced him to death.

[5] The facts of the case, which are as follows, will explain why we found him guilty of the charge of murder. On 19 January 2001 PW14 and her husband ie the deceased were in their shop, registered as Perniagaan Eng Hong. At about 12.20pm to 12.30pm the respondent parked his motorcycle in front of the shop and entered it. He requested for fish nets and a small box to keep fishing hooks. PW14 placed the items on the L-shaped sales counter. The respondent then went behind the sales counter, looked at some fishing lines, and then walked to the back of the shop. He pointed to a room and asked whether that was the office and PW14 answered in the affirmative. The deceased was inside the office at that time. PW14 then asked the respondent if he wanted anything else and he replied, 'tunggu sekejap' (wait for awhile) and then walked out of the shop. A few minutes later he re-entered the shop. He also replied, 'tengok-tengok' (looking around) when PW14 again asked whether he wanted anything else. The respondent then went behind the sales counter to where PW14 was and requested a small reel of fishing line. While PW14 was bending down to take the requested item the respondent came from the rear and suddenly grabbed her mouth. She felt a knife on the right side of her neck and heard the respondent utter, 'diam-diam rompak' (quiet, robbery). Startled, she kicked the chair beside her and fell. That noise attracted the attention of the deceased who thereupon entered the shop to investigate. PW14, when in the course of standing up, saw the respondent stabbing the deceased twice.

[6] The respondent then ran out of the shop. Both the deceased, who was then bleeding profusely, and PW14 cried out for help. PW5 who had stopped his motorcycle at a traffic junction nearby heard a female voice shouting 'rompak' (robbery). He saw the respondent running very fast across his path. PW8 who was also at the scene assisted PW5 to apprehend the respondent by giving chase on their motorcycles. The respondent ran to a lane behind a petrol station which was a cul-de-sac and was trapped. He squatted and remained silent. PW8 heard the respondent saying, 'Allah apa yang telah aku lakukan' (Allah what have I done). He was then caught and handed over to PW9, a police officer, who admitted hearing the respondent say, 'kenapa aku buat' (why did I do it).

[7] The deceased died on the way to hospital. The police found a bent knife ('P31A') at the pavement (colloquially referred to as the '5 foot way') and another knife ('P30A') inside the shop. PW16 who conducted the post mortem found two stab wounds on the deceased. One stab wound measured 4.5cm x 2cm, was located just left of the nipple and was 14cm deep (nearly six inches), directed towards the back and right. The other stab wound was on the upper right back located below the neck and 5cm to the right. That wound measured 5.5cm x 1.5cm and was 13.5cm deep, directed downwards. The doctor was quite graphic when he testified that the *heart* was cut, the right *lung pierced*, the liver was cut and the right *diaphragm* also cut. In no uncertain terms this witness said that either one of the stabbing was fatal.

[8] With the evidence being made available, whereas the wounds were caused by a sharp implement, and two knives being recovered on the scene, with one being bent and the other straight but covered with blood, there was no doubt that he had been stabbed with the latter. The knife covered with blood was P30 A, an implement that had all the features of an army knife ('Rambo knife') and certainly menacing looking.

[9] As regards how the wounds could have been inflicted, PW16 testified that the rear wound would have been caused by 'knife to body, rather than the other way round'. In a gist, even though it was possible for the front wound to have been inflicted by the deceased having lunged forward, by no account could that suggestion be applicable for the rear wound. PW14 put to rest all speculations when she denied that the deceased had lunged forward or even tripped. She clearly saw the respondent stabbing the deceased (hence discounting the suggestion that the stabbing occurred due to the body forcing itself onto the knife, inadvertently caused by the sheer momentum of the sudden lunging forward or tripping). She likewise denied that the rear injury was inflicted by a quirk when the deceased had attempted to stand upright. In short the wounds were never inflicted because of some accidental stabbing. She categorically stated that the deceased was never at any time armed as opposed

to the respondent, who even though had lost the first knife (P31A), had rearmed himself with P30A ie the very knife used to stab the deceased twice.

[10] With a prima facie case having been made out, and the COA directing that the defence be called, it was then up to the respondent to adduce rebuttal evidence, an evidential burden that rested on him to raise a reasonable doubt (*Balachandran v Public Prosecutor* [2005] 2 MLJ 307; [2005] 1 CLJ 85). In his defence the main thrust of his testimony, inter alia, reads as follows:

> Saya nampak ada duit dalam mesin duit. Baru teringin makan, Nampak. Saya fikir perempuan seorang, baru saya pergi ke motor mengambil pisau.
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> Setelah mengambil pisau saya masuk balik ke dalam kedai pancing. Saya suruh wanita mengambil barang di bawah Almari. Semasa wanita bercangkung, saya menutup mulut wanita itu. Saya di tepi wanita, sebab tempat sempit. Pisau saya di leher wanita.
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> Saya cuba lari, tetapi lelaki itu menuju kepada saya. Terjadi satu pergelutan kecil, sampai yang dia dapat pisau yang saya pegang. Dia cuba menikam saya.
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> Saya bergelut lagi. Saya masuk tangan saya ke dalam almari, mencapai sesuatu, macam, waktu itu saya tak pasti. Saya tolak lelaki, saya cuba lari. Lelaki menghadap saya dengan belakangnya ke pintu besar. Saya lari, dan lelaki terus bangun. Dengan itu saya tertikam lelaki di bahagian belakang kanan. Lelaki pusing dan terus menerpa saya. Pisau itu terkena lagi. Saya terlampau takut, saya terus campak pisau yang saya pegang. Saya tak pegang pisau selepas tikaman pertama.

[11] His other evidence went along the line that he was remorseful and did not intend to kill the deceased.

[12] The learned judge when reducing the charge to that of s 304(a) of the Code had authored amongst others that the defence was sprung at the earliest of stages ie at the stage of the cross-examination of SP9. The respondent merely wanted to rob but in the course of his robbery attempt a struggle had ensued between the deceased and him at or about the sales counter. The injuries were accidentally inflicted during the struggle. The pool of blood at the sales counter fitted in with the defence that his getaway was barred when attempting to get out. On the facts, the initial intention of the respondent was never to kill but with matters spiraling out of control, he had grabbed P30A from the sales counter and inflicted those injuries. The learned judge said there was a possibility that there was insufficient time for him to form the specific intention within the context of murder. That being so there was a lingering doubt on the intention that had been inferred in relation to murder.

[13] Specifically on the issue of intention the learned judge wrote: A

> At the close of the prosecution case, the court found that the accused had committed the act. The thorny issue was the intention which was inferred, but which the accused contested. But at the end of the entire case, could that intention still be steadfastly inferred? The accused denied he had the intention to cause death, and or had the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. His explanation was that he was impeded as he attempted to flee, that a struggle ensued between him and the deceased, that he grabbed P30A from the sales counter, and that those two stab wounds were inflicted either accidentally during the struggles or were inflicted with the intention only to make his getaway but not to kill. That was about the purport and net effect of the defence story. B C

[14] Since the Court of Appeal pursuant to the first trial had ordered defence to be called, it was now incumbent upon the respondent to rebut the prosecution's case, though subject to a maximum evaluation of the whole case by the learned judge. Since a maximum evaluation is mandated, let alone an appeal is merely a continuation of the trial and throws open all the evidence to re-examination, let us review the evidence adduced at the stage of the prosecution justifying the calling of the defence, to be followed by testing it against the rebuttal evidence if any (*Muniandy a/l Subramaniam v Public Prosecutor* [2006] 6 MLJ 623). D E

[15] But before any testing is done, since the respondent was charged for an offence under s 302of the Penal Code, the prosecution must establish certain ingredients. The latter must establish the death of the deceased, the death was caused by the respondent, he intended to cause death or intended to cause bodily injury as the respondent knows to be likely to cause the death or if intended to cause bodily injury the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or the respondent knew that his act was so imminently dangerous and likely to cause death (s 300 of the Penal Code). F G

[16] At the stage of the prosecution it was established that: H

(a) the respondent stabbed the deceased;

(b) he was stabbed with a knife which is a deadly weapon as factually found by the learned judge. The deliberate use of a dangerous weapon leads to the irresistible inference of an intention to cause death (*Sainal Abidin bin Mading v Public Prosecutor* [1999] 4 MLJ 497; *Tham Kai Yau & Ors v Public Prosecutor* [1977] 1 MLJ 174); I

(c) the stabbings occurred at vital parts of the body. The Federal Court in *Tan Buck Tee v Public Prosecutor* [1961] MLJ 176 had occasion to state:

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> There was the body with the five appalling wounds on it, wounds penetrating to the *heart and liver*, which must, have been caused by violent blows with a heavy sharp instrument like an axe. In the absence of anything else, whoever inflicted those blows must have intended to kill the person on whom they were inflicted ….(Emphasis supplied.);

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(d) the two stab wounds were deep (about six inches) indicating the application of great force and a desire to do great harm. None were lacerations or cuts normally associated with one flaying a knife around when attempting to escape;

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(e) there were two stab wounds, either of which was sufficient to cause death. In *Public Prosecutor v Tan Joo Cheng & Ors* [1991] 1 MLJ 196 while committing a robbery the appellant had stabbed the deceased once on the neck. Despite the singular stab wound inflicted he was nevertheless found guilty of murder. The emphasis in this case was not the number of

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stabs but rather the intention to strike at a vital spot;

(f) the deceased was never armed, and the issue of self defence on the part of the respondent, could never be raised;

(g) even though he had lost the knife, which he took from his motorcycle, he

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had no compunction in grabbing another one;

(h) the grabbing of another knife, if not to pursue his criminal intention to rob, was certainly to assist him escape no matter the cost; and

(i) he had every chance of escaping from the shop without the need to hurt

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anyone.

[17] Let us now sift through some of the evidence adduced by the respondent at the defence stage especially the verbatim evidence supplied above. Testing it against the evidence adduced at the prosecution's stage, these

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falsities were detected:

(a) the respondent stated that while struggling with the deceased the latter had managed to grab the knife from him. Yet SP14 stated that the deceased never at any stage was in possession of any weapon. Even though

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she is an interested witness her evidence is entitled to credence until there is cogent evidence adduced for disbelief (*Public Prosecutor v Foong Chee Cheong* [1970] 1 MLJ 97). With no negative evidence that could have led to the rejection of her evidence it was no surprise that the COA called the defence;

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(b) on a supposition that the knife was grabbed from the respondent in a close quarter fight, surely he would have suffered cuts or lacerations. Yet SP17 who took swabs of the respondent found no cuts on him. If the deceased had managed to grab the knife from the respondent the body at the mortuary would have been the respondent instead of the deceased;

(c) the sequence of the respondent's narration was that he stabbed the deceased first from the rear. The improbability of this story is made obvious by his own admission that he ran first, followed by the deceased standing up. Surely had the respondent been in the process of running away, and the deceased left behind as admitted, it would have been impossible for the rear stab to have been inflicted in the way the respondent described.

It must be highlighted that our approach when coming to the conclusion of the improbability of the respondent's story had taken cognizance of the principles of *Mat v Public Prosecutor* [1963] MLJ 263 Had we believed the story of the respondent the appeal would have been dismissed at the outset. On the other hand there was no necessity for us to believe his story to earn an acquittal. All that was required of him was to raise a reasonable doubt (*Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169);

(d) then came the second stabbing. It was supposed to occur when the deceased turned around ie after the stab from the rear. Yet in no uncertain term, the respondent said that after the first stabbing ie the rear wound, he never stabbed again (*Saya tak pegang pisau selepas tikaman pertama*). If he had released the knife how then did the second stabbing materialize; and

(e) the respondent, had behaved unreasonably as in the circumstances of the case he must surely know that the first stab wound, let alone followed by another fatal wound, would kill the deceased (*Mohamed Ali v Public Prosecutor* (infra). It must be clarified that it is unnecessary for us to conduct an enquiry to show that the respondent intended the precise injuries caused by his knifing of the deceased or he had medical knowledge of the anatomy of the deceased and that the stabbings would cut or pierce the heart, lung, liver and the diaphragm. If such a demand were put on the DPP to establish anatomical knowledge first before successfully establishing intention only doctors would be convicted for murder. What is required from a trial judge is a broad based and common-sense enquiry (*Virsa Singh v State of Punjab* AIR 1958 SC 465; *Mohamed Yasin bin Hussin v Public Prosecutor* [1976] 1 MLJ 156).

[18] The illustrated issues, amongst others, merely go toward establishing the need to sieve the evidence of the respondent with care and not to accept it at its face value, bearing in mind some falsity has been detected in his evidence. Once his veracity has been shown to be doubtful the whole of his evidence must be scrutinised with care. But it must be stressed that the doctrine of 'false in one thing false in everything' has to be taken with a pinch of salt as it merely involves the question of weight to be given to the evidence adduced in a given circumstance. It does not mean that his whole testimony must be rejected

A outright. His evidence must be appraised hence the need to separate the grain from the chaff e.g. the fact that the respondent took P30A from the sales counter and stabbed the deceased are admissions, and thus admissible evidence, but not the exculpatory parts (*Mohamed Ali v Public Prosecutor* [1962] MLJ 230; *Sucha Singh v State of Punjab* (2003) Cri LJ 3876).

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[19] Since it is no easy task to establish the ingredient of intention it thus has to be established by inferences arrived at from the evidence made available. The evidence before the court was more than ample to establish that ingredient. To reiterate, the two injuries were caused by a dangerous instrument ie a knife. The C injuries were deep and never mere slash wounds. With such wounds, which must have required great force, it would defy logic that the respondent did not intend to kill or cause serious injury on the deceased (*Tan Buck Tee v Public Prosecutor*).

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[20] It could never be overly emphasised that intention can be formulated on the spot. The time span spent in the shop, from the time he placed the knife next to the neck of PW14, to the moment when the deceased appeared on the scene were not mere seconds. There was more than ample time for the respondent to formulate his intention to kill, or cause injury to someone, and E that injury was sufficient in the ordinary course of nature to cause death in the event anyone gets in his way.

[21] *Ratanlal & Dhirajlal's Law of Crimes*, (24th Ed) Vol 11, Bharat Law House, New Delhi had authored:

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> .... If from the intentional act of injury committed the probability of death resulting is high, the findings should be that the accused intended to cause death or injury sufficient in the ordinary course of nature to cause death and the conviction should be murder.

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[22] In *Rajwant Singh v State of Kerala* AIR 1966 SC 1974 at p 1978 the court held:

> As was laid down in *Virsa Singh v State of Punjab*.... For the application of this clause H it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the I offender the offence of murder is established (Emphasis supplied.).

[23] A case in point is *Tan Cheow Bock v Public Prosecutor* [1991] 3 MLJ 404, where in the course of committing a robbery death was inflicted on the victim, culminating in the court finding the accused person (appellant) guilty of

murder. The deceased was a housewife living together with other occupants whilst the appellant was a neighbor. One of the occupants of the house later found the deceased dead with a knife stuck in her mouth. The appellant admitted in evidence that he went to the deceased's house to commit robbery, but due to matters getting out of hand, thrust the knife into the deceased's mouth thus causing her death. The court opined that so long as the appellant did an act which caused the death of the deceased, that the said act was done with the intention of causing bodily injury, that the injury caused was not accidental or otherwise unintentional and was sufficient in the ordinary course of nature to cause death, no further requirement was demanded. With the above ingredients established, and the trial judge having found the injury was caused intentionally as opposed to an accident, the conviction of murder was affirmed. In a gist even though the episode began as a robbery, but ended as a murder case, so long as the requirements of s 300(c) of the Code are complied with, a conviction for an offence of s 302 of the Code will follow (See also *Public Prosecutor v Tan Joo Cheng & Ors* [1991] 1 MLJ 196; *Public Prosecutor v Neoh Bean Chye & Anor* [1975] 1 MLJ 3).

[24] The last two matters to be resolved are his weak disposition/personality and the issue of the deceased preventing the respondent from escaping the scene of the crime which culminated in his death. On the first matter, to say that the respondent was of weak disposition (as he testified that he was frightened when the deceased appeared hence his reaction) and unable to control his emotion would fly against the grain of evidence. The fact that the respondent asked certain questions followed by good evasive answers when probed by PW14, striding out of the shop to pick up a knife from his motorbike after his mind to rob was made up, followed by him springing into action, merely goes to show his controlled disposition. On the second matter, in the circumstances of the case it is an absurd defence to allege that the stoic deceased was to be defaulted for impeding the escape route, with no fault to be assumed by the respondent by the death. To agree to such a defence would tantamount to accrediting a murderer an escape-chute whenever death ensues in any given situation.

[25] We were satisfied beyond reasonable doubt that the respondent had the intention to cause bodily injury to the deceased, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death, what with the injury not caused by accident or inflicted unintentionally (s 300(c) of the Code). PW16 in evidence had in crystalline terms testified that those wounds could not have been accidentally caused (*Chee Kim Seng & Anor v Public Prosecutor* [1962] MLJ 32). PW14's evidence also put to rest any lingering doubt as to whether the stabbings were accidental, unintentional or otherwise.

A **[26]** The fact that the episode began as a robbery attempt but ended with the death of the deceased was of no defence to the murder charge proffered against the respondent. So long as the criminal act falls within the ambit of s 302 with the intention falling under s 300 of the Code, in this case s 300(c), the fate of the respondent was sealed. We were satisfied that the evidence submitted by
B him had failed to rebut the prosecution's case and as such the prosecution had successfully established a case beyond reasonable doubt for the charge of murder. It was based on these grounds that this court allowed the appeal and set aside the order of the High Court. We accordingly found him guilty and convicted him under the original charge of murder. With there being only one
C sentence for murder we sentenced him to death.

Appeal allowed.

D Reported by Kohila Nesan

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